



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR95-847

Dear Commissioner Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31789.

The Texas Department of Human Services (the "department") received an open records request from a former employee for summaries of employee interviews conducted by the department during its investigation of alleged incidents of sexual harassment. You contend that the requested records may be withheld from the requestor pursuant to, *inter alia*, section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

You inform this office that the requestor has filed an EEOC complaint for which the department is currently negotiating a settlement agreement. The filing of such a complaint constitutes evidence that the likelihood of litigation against the department is more than mere conjecture. See Open Records Decision No. 386 (1983). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation. See also Open Records Decision No. 301 (1982) (litigation exception intended to protect the interests of the state in adversary proceedings or in negotiations leading to the settlement thereof).

This does not, however, end our discussion of the applicability of section 552.103(a). We note that to the extent the requestor has previously seen or had access to the records at issue, there would be no justification for now withholding those records pursuant to section 552.103(a). See Open Records Decision Nos. 349 (1982), 320 (1982).

Consequently, you must release to the requestor copies of all summaries of his own interviews, which he has previously reviewed and signed.¹ You may withhold the remaining requested records pursuant to section 552.103(a) at this time. Please note that the applicability of section 552.103(a) ends once the requested information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, or once the department reaches a settlement with the requestor. Open Records Decision Nos. 350 (1982), 349 (1982), 320 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 31789

Enclosures: Submitted documents

cc: Mr. Jose Arce
318 East San Pedro
Laredo, Texas 78041
(w/o enclosures)

¹Because we resolve your request under section 552.103(a), we need not address your claims regarding common-law privacy, except to note that the names of all alleged victims of sexual harassment identified during the requestor's interviews must be deleted in accordance with *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied).